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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 30

IDAHO SHEET METAL WORKS, INC., PETITIONER

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (R. 98–108) is reported at 335 F. 2d 952. The findings, conclusions, and opinion of the district court (R. 87, 92) are not reported.

JURISDICTION

The judgments of the court of appeals (R. 109, 110) were entered on August 10, 1964. A timely petition for rehearing was denied on September 15, 1964 (R. 117). The petition for a writ of certiorari was filed on December 11, 1965, and was granted on March 1, 1965 (R. 118–119). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a sheet metal plant engaged primarily in fabricating, installing, and repairing equipment to be used by manufacturers and processors in the production of goods for interstate commerce is a "retail or service establishment" within the exemption provided by Section 13(a) (2) and (4) of the Act.

STATUTES INVOLVED

The pertinent provisions of the Fair Labor Standards Act of 1938, 52 Stat. 1060, as amended by the Fair Labor Standards Act Amendments of 1949, 63 Stat. 910, and by the Act of May 5, 1961, 75 Stat. 65 (29 U.S.C. 201, *et seq.*), are printed in the Brief for Petitioner, Appendix A, page 17.

STATEMENT

This case involves two consolidated actions brought by the Secretary of Labor under the Fair Labor Standards Act—one seeking an injunction under Section 17 of the Act to restrain further violations by petitioner of the Act's overtime requirements, and the other instituted under Section 16(c) to recover unpaid overtime compensation on behalf of one of petitioner's employees (R. 11). Petitioner admittedly did not pay its employees in accordance with the overtime requirements of the Act (R. 24–25). It contended that the employees were not within the coverage of the Act and that, in any event, the business was a "retail or service establishment" entitled to exemption under Section 13(a) (2) and (4) of the Act (R. 26).

1. Petitioner operates a plant in Burley, Idaho, where it employs some twelve workers in fabricating, installing, and repairing sheet metal products (R. 11–21, 24–25, 44, 100–101). Although petitioner does some fabrication work for small businesses and individuals, and, as an "incidental," sells small stock items (R. 49), about 83% of its gross income during the years involved in these actions (1959 through 1961)—$563,035 out of a total of $673,808—was derived from the fabrication, installation, and maintenance of equipment for five large potato processors in the Burley area (R. 12–19; 100–101). Petitioner's employees, during many workweeks, spent a substantial part of their time working on equipment—such as vats, storage tanks, elevator buckets, and chutes—which is made to order in accordance with the plans and specifications of the particular processor and used in the production of dehydrated and frozen potatoes for interstate shipment (R. 12–21, 50–51, 54, 101).[1] Some of this work, both fabrication and installation, was performed in the customer's plants, and on such occasions, petitioner's employees would work along-

[1] The manager of the Shelley Processing Company testified as to several of these items and the use made of them by his company. These included: a number of receiving tanks, each holding some 5,000 pounds of peeled potatoes, which are located at the ends of the trimming tables in the Shelley plant and help control the feed of the potatoes to the individual processing lines (R. 32–34, 43); elevator buckets and chutes made by defendant for the purpose of transferring potatoes from one processing line to another (R. 35–36); and some 50 hoods, which are located over the various cookers in the plant and are used to vent steam and vapors through the roof of the plant (R. 34–35).

side customers' employees, under the same supervision (R. 39–40, 101).

In addition to the 83% of its income derived from the work for the five potato processors, petitioner derived another 3% of its income from comparable work performed for five other interstate producers engaged in the manufacture or processing of sugar, flour and millfeed, seeds, and containers (R. 17–21, 100–101).

2. Petitioner's claim to exemption as a "retail or service establishment" under Section 13(a) (2) and (4) of the Act rested upon the testimony of its lawyer-accountant, its general manager, its president, and two salesmen who sell metal products to it (R. 51–52, 58–67), to the effect that they considered establishments such as petitioner's to be "custom retail and service establishments" (R. 61). The lawyer-accountant explained that his view was based on the belief that such establishments evolved from the "early tin shop" found in hardware stores around 1900 (R. 58–61), although he acknowledged that there are "marked differences" between petitioner's operation and that of the traditional tin shop. The former, he stated, is "immensely larger"; its product is "larger in size and much higher in price"; and the early tin shop did not fabricate equipment for potato processing plants since there "were no potato plants in existence in those days" (R. 62). Petitioner's president testified that he regarded his business as "retail" because "[e]very job we do is to the customer's specific recommendations and to his personal use" (R. 52), and because 60% of his sales (in

number, not in dollar volume) is to "the general public" as distinguished from industrial customers (R. 57). He acknowledged, however, that the market for the type of equipment fabricated by petitioner for potato processors (which accounted for 83% of its total income) was "definitely" limited (R. 54). Three other witnesses gave no explanation whatsoever of the basis for their views (R. 63–64, 65, 66–67).

3. The district court upheld petitioner's contention that the work performed for the interstate producers did not bring its employees within the Act's coverage, citing *Mitchell* v. *H. B. Zachry Co.*, 362 U.S. 310 (R. 89–90). It also sustained petitioner's claim to exemption as a "retail or service establishment" on the basis of its findings that petitioner's business was so recognized in the industry "as shown by the testimony of the manager of defendant corporation and representatives of companies selling materials to defendant" (R. 91). It declined to follow this Court's decision in *Roland Electrical Co.* v. *Walling*, 326 U.S. 657, on the ground that its description of the "retail concept" was "repudiated by the 1949 amendment to the Act" (R. 91).

The court of appeals reversed on both issues (R. 99–108). On the coverage issue, it relied on the *Roland* decision and on legislative history showing "beyond doubt that the holding in Roland that those employees were * * * within the coverage of the Act, would not be affected by the 1949 amendment" (R. 105).

On the exemption question, the court, citing *Mitchell* v. *Kentucky Finance Co.*, 359 U.S. 290, treated as irrelevant the testimony of petitioner's witnesses

to the effect that the business was considered "retail" in the industry, and ruled instead that the case was governed by the holding in *Roland* that the exemption is not applicable to the business of selling industrial goods and services to manufacturers producing goods for commerce. On the basis of the legislative history, the court below pointed out that the 1949 amendment was not intended to repudiate the *Roland* holding, or to extend the traditional "retail concept" to types of businesses not previously covered by it, but merely to do away with the "business use" test whereby any sale of goods or services for use in the customer's business was *ipso facto* deemed non-retail. The court concluded that petitioner's business, like the similar enterprise in *Roland* and like the small loan business in *Kentucky Finance, supra,* was "outside the retail concept" of the Act independently of the rejected "business use" test, and, therefore, could not be classified as retail under the 1949 amendment.

The petition for a writ of certiorari sought review of both the coverage and the exemption rulings but the writ granted by this Court was limited to the exemption question (R. 118).

ARGUMENT

PETITIONER'S BUSINESS IS NOT AN EXEMPT "RETAIL OR SERVICE ESTABLISHMENT" BECAUSE MORE THAN 25 PERCENT OF ITS BUSINESS INVOLVES THE SALE AND SERVICING OF MANUFACTURING EQUIPMENT FOR USE IN THE PRODUCTION OF GOODS FOR INTERSTATE COMMERCE

Introduction and Summary

1. The parties are agreed on the starting point for decision of this case. Petitioner, unlike the respond-

ent Steepleton in the companion case, No. 31, acknowledges that more is required for the retail exemption than a mere showing that 75 percent of a company's sales are not-for-resale and are labelled "retail" for one or another purpose by people in or connected with the industry. As petitioner states at pp. 6–7 of its brief, "This Court in *Mitchell* v. *Kentucky Finance Co.*, 359 U.S. 290, interpreted the 1949 amendments to the Fair Labor Standards Act in such a way as to impose an additional requirement, namely, that the industry under consideration be considered retail under traditional concepts."

In *Kentucky Finance,* this Court held that a small loan business, although characterized as "retail" by the industry itself, was ineligible for the exemption because "nothing in the debates or reports * * * suggests that Congress intended by the amendment to broaden the fields of business enterprise to which the exemption would apply" and, under traditional concepts, financing was not a business to which the exemption applied whether or not particular types of finance companies "were thought of in the financial industry as engaged in 'retail financing' * * *." 359 U.S. at 294, 295. As we have pointed out in greater length in the *Steepleton* case, the Court based its conclusion on two facts. First, the sole purpose of the 1949 amendments was to eliminate the "business use" test under which "sales to other than individual consumers could not qualify as retail." 359 U.S. at 294. Second, the limited scope of the amendment—including a listing of businesses to which the exemption would not apply because of traditional concepts—was repeatedly

emphasized in "the explicit and repeated statements of the sponsors of the amendatory legislation and in the House and Senate Reports * * *." *Id.* at 295. The Court concluded in *Kentucky Finance* that "[i]n the light of the abundant pointed evidence that Congress did not intend that businesses like those of respondents be exempted from the overtime and record-keeping provisions of the statute by § 13(a)(2), we would not be justified in straining to bring respondents' activities within the literal words of the exemption." *Id.* at 296.

2. The parties to this case differ only as to the application of the *Kentucky Finance* standards to this case. Although ignoring the legislative history of the 1949 amendments, petitioner acknowledges the relevance of traditional concepts of "retail" applied under the Act prior to 1949. It simply contends that the construction and repair of equipment made of sheet metal to be used in the production of goods for commerce falls within traditional concepts of retail. We submit that, to a truly startling extent, the considerations controlling the decision in this case are identical to those determinative in *Kentucky Finance*. The legislative history which dictated this Court's conclusion that credit companies are not within the scope of this exemption as amended, regardless of the industry's view of "retail" selling or servicing (359 U.S. at 295), is equally conclusive of the non-exempt and ineligible status of an establishment (like petitioner's) engaged predominantly "in the sale and servicing of manufacturing equipment used in the production of goods" (House Conference Report, 95 Cong. Rec.

14932; Statement of Majority of Senate Conferees, 95 Cong. Rec. 14877). The non-exempt status of establishments engaged in the latter type of business is no less evidenced by "explicit and repeated statements of the sponsors of the amendatory legislation and in the House and Senate Reports * * *." (359 U.S. at 295). Moreover, as in *Kentucky Finance*, this explicit legislative history reflects a Congressional desire to maintain the traditional concepts of "retail" prior to 1949 and, under such concepts, petitioner's business, like that of a finance company, was plainly not "retail." Besides adopting what Congress regarded as objectionable "dicta"[2] setting forth the doctrine that no sale for business use was retail, this Court in *Roland Electric* also applied just such a traditional concept in holding that the exemption did not apply to establishments "which supply the materials and services currently needed for the maintenance of productive machinery used by those who produce goods for interstate commerce * * *." 326 U.S. at 668.

I. THE LEGISLATIVE HISTORY OF THE 1949 AMENDMENTS DEMONSTRATES CONCLUSIVELY THAT THE SALE AND SERVICING OF MANUFACTURING EQUIPMENT USED TO PRODUCE GOODS FOR INTERSTATE COMMERCE IS WHOLLY OUTSIDE THE "RETAIL CONCEPT" OF THE FAIR LABOR STANDARDS ACT

Over eighty percent of petitioner's business involves the fabrication, installation, and maintenance of manufacturing equipment for companies producing and processing goods for shipment in interstate com-

[2] 95 Cong. Rec. 12497 (Senator Holland, sponsor of the amendment in the Senate).

merce (R. 12–19, 17–21, 100–101). Congress explicitly considered the applicability of the Fair Labor Standards Act to such enterprises at the time of the 1949 amendments to the Act. Its conclusions were stated in the legislative history with rare clarity. Both the House Conference Report and the Statement of the Majority of Senate Conferees declared unequivocally that "the amendment * * * does not exempt an establishment engaged in the sale and servicing of manufacturing machinery and manufacturing equipment used in the production of goods [for interstate commerce] * * *" (95 Cong. Rec. 14932), "[n]or * * * change the status of * * * establishments selling industrial goods and services to manufacturers engaged in the production of goods for interstate commerce and to other industrial and business customers (such as the establishment held nonexempt in *Roland Electric Co.* v. *Walling,* 326 U.S. 657)" (*id.* at 14877).

The sponsors of the amendment in both the House and the Senate specifically reaffirmed what they regarded as a traditional concept properly applied in *Roland Electric* at the same time as they repudiated the "dicta" in that decision. That concept is that the Act does not exempt, as "retail" workers, "the multitude of employees who are engaged in establishments * * * which supply the materials and services currently needed for the maintenance of productive machinery used by those who produce goods for interstate commerce," since the materials and goods supplied to such customers "remained actively in use in the production of the 'flow of goods in commerce' " (*Roland,* 326 U.S. at 668, 678). To extend the exemption to such

enterprise "would take the heart out of this Act. Savings resulting from substandard labor conditions would be reflected directly into competitive costs." 326 U.S. at 668.

As the legislative history makes unmistakably clear, the Congressional objection to the *Roland* decision had nothing to do with this traditional concept, but was confined to "the dicta" in the opinion to the effect that it was appropriate to restrict the meaning of "retail" to sales made "to meet personal rather than commercial and industrial uses" (326 U.S. at 675). The 1949 amendment was aimed only at this "dicta and references in that decision" which deemed non-retail all "business sales, * * * no matter how they may happen, in spite of the fact that they are completely intrastate" (*e.g.*, 95 Cong. Rec. 12497, 12498, 12499), and which seemed to announce "the sweeping ruling * * * that no sale of goods or services for business use is retail" (H. Conf. Rep., 95 Cong. Rec. 14931). As this Court concluded in *Kentucky Finance:* "The legislative history of the 1949 amendment * * * demonstrates beyond doubt that Congress was acting in implementation of a specific and particularized purpose"—*i.e.*, to obviate this "sweeping" "business use" test (359 U.S. at 293, 294, n. 5).

Indeed, far from repudiating the holding of *Roland,* as opposed to its dicta, the sponsors of the 1949 amendment specifically endorsed the result of the case, bottomed as it was on a traditional concept at the very heart of the Act—the intent to reach, and not to exclude, employees engaged in "establishments * * * which supply the materials and services currently needed for the maintenance of productive machinery"

used "in the production of the 'flow of goods in commerce'" (326 U.S. at 666, 678, quoted more fully, *supra*, p. 10). Not only did the reports of both House and Senate conferees expressly state that the amendment "does not exempt" nor "change the status of" establishments engaged in the sale and servicing of such manufacturing equipment (*supra*, p. 10), but "[a]ny residual doubt on this score is dispelled by the explicit and repeated statements of the sponsors of the amendatory legislation" (cf. *Kentucky Finance*, 359 U.S. at 295). Thus Senator Holland (sponsor of the amendment in the Senate), assured his colleagues, explicitly and specifically, that the *Roland* case would "[d]efinitely not" be decided any differently under the amendment (95 Cong. Rec. 12505; see also *id.* at 12497). This statement was made directly with reference to *Roland's* holding "that a company engaged in selling industrial goods and service to manufacturers engaged in the production of goods for interstate commerce and to other industrial and business customers was not a retail or service establishment" (*id.* at 12505).[3]

If further evidence were needed of the legislative intent to preserve the basic statutory "retail concept" as described in *Roland*, abundant confirmation is to be found in the reports and debates with respect to the closely related 1949 amendment of Section 3(j),

[3] See also statement by the Chairman of the House Conferees' Committee in submitting the conference report (95 Cong. Rec. 14942): "[T]he reference to *Roland Electrical Co.* v. *Walling* * * * should not mislead anyone into concluding that the conferees intended to reverse or nullify that decision."

defining the scope of the Act's "production" coverage. Here, too, explicit statements in both the House and Senate reports demonstrated beyond doubt the legislative intent to retain the Act's coverage of employees engaged in selling and servicing industrial machinery, tools, and equipment used in the production of goods for commerce. Thus both the House and Senate reports stated that the amended language of the definition of "produced,"[4] would continue to cover employees, who, like those in the instant case, "make, repair, or maintain machinery or tools" or "machinery parts * * * or other equipment used by purchaser in producing goods for interstate commerce"—"whether they are employed by the producer of goods or someone else who has undertaken the performance of particular tasks for the producer" (H. Rep., 95 Cong. Rec. 14928–29; S. Rep., *id.*, 14874–75).[5] The Senate report was even more explicit, approving, by name, the *Roland* decision and a number of other previous court decisions involving activities indistinguishable from the business of petitioner

[4] Before the amendment, the pertinent portion of Section 3(j) read: "for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in * * * *any process or occupation necessary to the production thereof*, in any State." [Emphasis added.] The 1949 amendment changed the italicized words to read: "or in any closely related process or occupation directly essential to the production thereof * * *."

[5] The more detailed context of the above quoted statements, printed in the Appendix, *infra*, pp. 18–19, plainly manifests the legislative intent to preserve the Act's application to precisely the kind of "production for commerce" activities in which petitioner here is engaged.

in the instant case.[6] This careful and specific delineation in the Congressional Reports of the effect of the 1949 amendment of a key coverage provision of the Act would have been meaningless if Congress intended to exempt such employees by its simultaneous amendment to the "retail or service establishment" exemption.[7]

---

[6] Among the decisions thus approved, in addition to *Roland*, were *Walling* v. *Amidon*, 153 F. 2d 159 (C.A. 10), upholding the Act's coverage of employees of a sand and gravel company engaged in selling sand for use as lining material to protect from heat equipment used in producing steel products; *Holland* v. *Amoskeag Machine Company*, 44 F. Supp. 884 (D. N.H.), upholding the Act's coverage of sheet metal workers and electricians engaged in repairing machinery for their employers' customers, some of whom are manufacturers of goods for commerce; and *Walling* v. *Hamner*, 64 F. Supp. 690 (W.D. Va.), upholding coverage of employees of a saw mill producing mine props sold to local coal mines for use as roof supports during mining operations.

[7] The inapplicability of the traditional retail concept to petitioner's business is further demonstrated by the "pre-1949 rulings and interpretations by the Administrator" which, as this Court pointed out in *Kentucky Finance* (359 U.S. at 292, n. 1), Congress directed "should remain in effect unless inconsistent with the statute as amended." 63 Stat. 920. The Administrator's Interpretative Bulletin, listing businesses which "are not in the ordinary case sufficiently similar in character to retail establishments" to qualify for exemption, included, along with "personal loan companies," such enterprises as "machine shops and foundries", "industrial blacksmiths", and "establishments engaged in sharpening and reconditioning industrial tools." 1942 Wage & Hour Manual, pp. 326, 334–335. The fact that sheet metal companies were not mentioned by name is, of course, irrelevant where such enterprises share with the businesses specifically listed the controlling characteristic that all are engaged primarily in furnishing and maintaining manufacturing equipment. See *Roland Electric Co.* v. *Walling*, 326 U.S. at 677, and *Goldberg* v. *Sorvas*, 294 F. 2d 841, 846 (C.A. 3).

II. THE DECISIONS RELIED UPON BY PETITIONER DO NOT SUPPORT ITS CLAIM OF EXEMPTION IN THIS CASE

Petitioner places its primary reliance on *Wirtz* v. *Modern Trashmoval, Inc.*, 323 F. 2d 451 (C.A. 4), certiorari denied, 377 U.S. 925, in which the Fourth Circuit held that trash-removal services were not outside "the traditional retail concept." The starting point of the court's analysis was this Court's decision in *Kentucky Finance*, which, the Fourth Circuit recognized, held that "there are fields which completely lack a retail concept, such as the financial field, and there are business activities which have been specifically mentioned by Congress as being ineligible for exemption as retail or service establishments." 323 F. 2d at 465. The court's decision depended upon its conclusion "that trash removal is not in either of these categories." *Ibid.* In contrast, here as in *Kentucky Finance*, Congress has specifically declared in both Committee Reports and debate that the particular business activities—"the sale and servicing of * * * manufacturing equipment used in the production of goods" (95 Cong. Rec. 14932, 14877)—are ineligible for exemption as retail or service establishments because they fall outside the traditional retail concept as expressed by the holding of *Roland Electric*.

The other decision on which petitioner relies, *Wirtz* v. *English Oil Service* (D. Kan., April 29, 1965), 16 WH Cases 867, 51 Labor Cases ¶ 31,689,[8] far from supporting petitioner's position, ruled quite the opposite. It held that an enterprise whose primary business was

[8] The decision of the district court is not yet officially reported. There has been no appeal of the district court decision.

the hauling away and disposing of salt water and basic sediment from producing oil wells—thereby furnishing services closely related and directly essential to the production of oil for interstate commerce—could *not* qualify for the exemption, even though, as the court expressly noted, such "services are considered 'retail' within the oil industry" (16 WH Cases at 871). The court reached this conclusion on the ground that "the bulk of defendants' services were sold to * * * oil producers" which "are concentrated in the producing end of the economic chain" and "occur in the production aspects of the industry" (*id.* at 870). The "key" to its decision, said the court, was that a "retail or service establishment" within the contemplation of the exemption "performs a function in the business organization of the nation which is at the very end of the stream of distribution" (*ibid.*).

In *English Oil,* the district court recognized that *Modern Trashmoval* had properly required an "initial inquiry" into whether "defendant's activities are considered retail under traditional concepts,"[9] and distinguished the *Modern Trashmoval* decision specifically on the ground that the Fourth Circuit had "answered that initial inquiry in the affirmative" (id. 869–870). Noting that "[t]he basic philosophy of 13(a)(2) remained the same" under the 1949

[9] The Fourth Circuit said in *Modern Trashmoval* that, as to businesses which neither "completely lack a retail concept" nor "have been specifically mentioned by Congress as being ineligible for exemption" (323 F. 2d at 465), "we think the most satisfactory approach is to examine the facts of record * * * in the light of general criteria developed under the Act since its enactment in 1938" (*ibid.*).

amendment (citing the *Kentucky Finance* decision), the court concluded: "*Only if* such [initial] inquiry is answered in the affirmative do we reach the question of whether defendants' sales or services to business or commercial customers are considered as retail in the particular industry. If the initial inquiry is answered in the negative, the exemption is simply not established" (*id.* at 869, emphasis in original). In the case at bar, as in *English Oil*, plainly the initial inquiry must be answered in the negative, as a matter of law.

CONCLUSION

Since over 80 percent of petitioner's gross annual income is derived from sales and services which are wholly outside the statutory "retail concept," petitioner cannot qualify for the "retail" exemption. Accordingly, the judgment below should be affirmed.

Respectfully submitted.

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APPENDIX

Senate Report (95 Cong. Rec. 14874–75, emphasis added):

> Typical of the classes of employees whose work is closely related and directly essential to production, within the meaning of section 3(j) as amended by the conference agreement, are the following employees performing tasks necessary to effective productive operations of the producer.
>
> 1. Office or white-collar workers [citing, *inter alia*, the *Roland Electrical* decision].
>
> 2. Employees *repairing, maintaining, improving or enlarging the buildings, equipment, or facilities of producers of goods* [citing *Roland* first, followed by *Kirschbaum* v. *Walling*, 316 U.S. 517, and other pre-1949 decisions].
>
> * * * * *
>
> The work of such employees is, as a rule, closely related and directly essential to production *whether they are employed by the producer of goods or by someone else who has undertaken the performance of particular tasks for the producer.*
>
> The work of employees or employers who *produce or supply goods or facilities for customers engaged within the same State in the production of other goods for interstate commerce* may also be covered as closely related and directly essential to such production. This would be true, for example, of employees engaged in the following activities.
>
> 1. *Production of tools,* dies, designs, patterns, *machinery, machinery parts,* mine props, industrial sand, *or other equipment used by purchaser in producing goods for interstate commerce* [citing *Roland* along with the *Amoskeag*

Machine Co., Amidon, and *Hamner* decisions, see *supra,* p. 14, fn. 6].

* * * * *

House Report (95 Cong. Rec. 14928–29, emphasis added):

* * * the proposed changes are not intended to remove from the act *maintenance,* custodial, and clerical *employees of manufacturers,* mining companies, and *other producers of goods for commerce.* Employees engaged in such *maintenance, custodial, and clerical work will remain subject to the act, notwithstanding they are employed by an independent employer performing such work on behalf of the manufacturer, mining company, or other producer for commerce.* * * *

The bill as agreed to in conference also does not affect the coverage under the act of employees who *repair or maintain buildings in which goods are produced for commerce* (*Kirschbaum* v. *Walling,* 316 U.S. 597), or *who make, repair or maintain machinery or tools and dies used in the production of goods for commerce.* Likewise, employees of public utilities, furnishing gas, electricity or water to firms within the State engaged in manufacturing, producing, or mining goods for commerce, will remain subject to the act. *All the employees mentioned in this paragraph are doing work that is closely related and directly essential to the production of goods for commerce.*

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1949